

REMARKS

First, it is respectfully submitted that claims 1-6, 9, 10 and 13-21 are fully supported by the specification and the accompanying drawings. Figure 1, shows a clamping device **10** with an upper and lower clamp jaws **50** and **51**. As expressly stated in the specification, Figures 3-6 display alternate configurations of the clamping member of the clamping device **10** as first illustrated in Figure 2. Figure 6 is a cross-section view where an aperture extends through the insulating material **18** along the clamping member. Conductive member **16** is located within the insulative material and conductive of energy through the aperture.

In addition, Figures 28-32 illustrate a clamping device **70** which has an upper and lower jaw **78, 80**. Figure 32 shows a cross-section of the jaws where an aperture extends through insulating material **84**. The inverted T-shaped conductive member **94** is positioned within the jaw so that electrical energy passes through the aperture, similar to Figure 6.

Therefore, it is respectfully submitted that the specification more than adequately describes a jaw including an aperture or an aperture extending through insulative material and associated conductive member as recited by these claims.

Independent Claim 1 and the Respective Dependent Claims
Are Not Anticipated Or Obvious in View of the Prior Art

Mulier et al. '037 describes a device to seal tissue to prevent against "the flow of blood, lymphatic fluid, air, and other bodily fluids, and gases." The device described contains a plurality longitudinal grooves along the jaws that is formed from material such as stainless steel tubing. The purpose of these grooves is to infuse an electrolytic solution onto the tissue surrounding the jaw. The entire jaw or the stainless steel tubing is then energized RF energy, which in turn energizes the electrolytic solution causing the tissue to be sealed.

However, it is respectfully submitted that Mulier '037 does not teach or suggest the subject matter of claim 1. In Mulier the entire jaw or tubing delivering the electrolytic solution is apparently energized with RF energy (See '037 Column 5 line 17, and Column 6 line 17). Thus, Mulier does not teach nor suggest a device with a tissue engaging surface comprising of insulative material and an aperture extending through the insulative material. Nor does Mulier teach or suggest that the respective conductive member of at least one of the jaws is disposed so that electrical energy flows through the aperture to the tissue clamped between the jaws.

The dependent claims 2, 3, and 13-19, which dependent directly or indirectly from claim 1, contain all the features of claim 1 and should be allowed for reasons set forth above.

Amended Claim 4 Is Not Anticipated or Obvious

in View of the Prior Art

Independent claim 4 has been amended to clarify the claimed subject matter. Particularly, claim 4 has been amended to point out that the clamping surface comprises an insulating material which defines an elongated aperture. Additionally, at least one of the opposed electrodes is carried at least in part within the jaw and has a width within the jaw that is greater than the width of the aperture.

As amended, the subject matter of claim 4 is not shown or suggested by the Mulier '037 patent. Mulier does not teach or suggest a device wherein the clamping surfaces of the jaws are comprised of an insulating material which defines an elongated aperture having a width, with at least one of the electrodes being carried at least in part within the jaw and having a width within the jaw that is greater than the elongated aperture. None of these features are found or suggested in Mulier. Thus, claim 4 and the respective dependent claims are respectfully believed to be neither anticipated nor rendered obvious in view of the cited patent.

Amended Claim 21 Is Not Anticipated or Obvious
in View of the Prior Art

Independent claim 21 has also been amended to clarify the claimed subject matter. More particularly, claim 21 has been amended to point out that the elongated electrically conductive member carried by the jaw is generally parallel to and in proximity to the elongated aperture so as to allow electrical energy to flow through the aperture.

As amended, the subject matter of independent claim 21 is not shown nor suggested by the Mulier '037 patent. Mulier simply describes a wire which is connected either to the jaw or to a stainless steel tubing carrying the electrolytic solution which contains spaced holes to infuse the tissue with electrolytic solution. Mulier does not suggest and does not contain any reference to a jaw having an elongated aperture in the tissue engaging surface and an elongated electrically conductive member carried by the jaw which is also generally parallel and in proximity to the elongated aperture. In contrast to Claim 21, Mulier has neither an elongated aperture nor conductive member in the relationship as set forth in claim 21.

Double Patenting

Claims 1-6, 9, 10 and 13-21 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,517,536 in view of Mulier et al. However, it is respectfully submitted that the pending claims are not obvious in view of the claims of U.S. Patent 6,517,536 in further view of Mulier. The claims of the '536 patent do not describe or suggest an aperture extending through the insulative material as set forth in pending claim 1. Nor do the claims of the '536 patent in view of Mulier describe or suggest other features of currently amended claims 4 and 21 as described above.

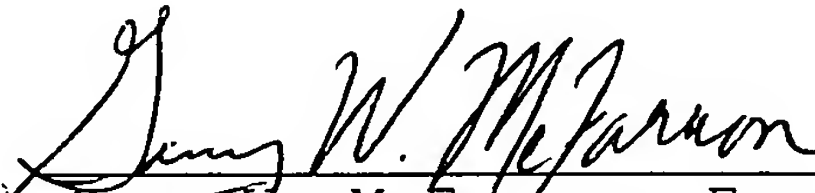
Therefore, it is respectfully submitted that judicially created doctrine of obviousness-type double patenting does not render obvious independent claims 1, 4, and 21 or to their respective dependent claims, which include all the limitations of their respective independent claims.

Conclusion

It is respectfully submitted that the subject matter of the claims is not shown or suggested by the references cited in the Office Action and, accordingly, the withdrawal of the rejections and reconsideration of the claims are requested.

Respectfully submitted,

Date: January 29, 2004

By: 
Gary W. McFarron, Esq.
Registration No. 27,357
Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 West Adams St., Suite 2850
Chicago, IL 60606
Telephone: (312) 236-8500

Attorneys for Applicant